

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 018323-97

Laura Cornetta
Nashoba Valley Tech. High School
Mass Education & Govt. Self-Insurer Group

Employee
Employer
Self-insurer

REVIEWING BOARD DECISION

(Judges Carroll, McCarthy and Costigan)

APPEARANCES

James J. Collins, Esq., for the employee
Susan F. Kendall, Esq., for the self-insurer at hearing
John J. Canniff, Esq., for the self-insurer on appeal

CARROLL, J. The self-insurer appeals from a decision in which an administrative judge awarded the employee permanent and total incapacity benefits for her work-related emotional injury. For the reasons that follow, we affirm the decision.

Liability for the employee's emotional incapacity was established by an earlier hearing decision filed on February 23, 2001, which ordered the self-insurer to pay partial incapacity benefits. The present matter involves the employee's claim for permanent and total incapacity benefits under § 34A.

Laura Cornetta's emotional injury stemmed from a physical assault that she suffered at the hands of a student while she was working as a teacher on May 22, 1997. (Dec. 6.) We need not recount more of the facts, except to note that the employee had a pre-existing post-traumatic stress disorder that had been dormant prior to the assault, but was reactivated by that incident. (Dec. 12, Dep. 13-14.)

"This case . . . concerns psychological injury subsequent to physical trauma, which has long been held to be compensable." Antoine v. Pyrotector, 7 Mass. Workers' Comp. Rep. 337, 341 n.1 (1993), citing Fitzgibbons's Case, 374 Mass. 633, 637 (1978). In so determining the nature of the injury in Antoine, we

concluded that the employee's emotional disability must be assessed under the "as is" causal standard applicable to simple physical injuries, not the heightened standard of "significant contributing cause" that governed purely emotional disability claims at that time. Id. See G. L. c. 152, § 1(7A)(St. 1986, c. 662, § 6). See also Cirignano v. Globe Nickel Plating, 11 Mass. Workers' Comp. Rep. 17, 21-23 (1997). Our decision in Murphy v. Lawrence General Hosp., 10 Mass. Workers' Comp. Rep. 263 (1996), established that the physical trauma in an Antoine-type physical/mental claim need not be – in and of itself – an incapacitating industrial injury. The physical trauma in Murphy was a needle stick, which required AZT treatment because of the possibility of HIV infection. The incapacity claim in that case was for the emotionally debilitating consequences that the employee suffered due to the fear of contracting HIV/AIDS. Id. at 264-265.

The present case is governed by Murphy as a matter of law: the work-related physical assault on the employee resulted in treatment to her right wrist, but was not itself incapacitating. The employee's emotional reaction to the assault was the source of her incapacity claim. (February 23, 2001 Dec. 6-7.) This being so, we reject the self-insurer's argument that the judge erred by failing to analyze the employee's claim under the "predominant contributing cause" standard now applicable to purely emotional disability claims. See G. L. c. 152, § 1(7A)(St. 1991, c. 398, § 14).

However, the analysis does not stop there. Where an Antoine-type physical/mental claim involves reactivation of a pre-existing, non-compensable psychological condition, the fourth sentence of § 1(7A) duly applies to change the standard of causation once again. That familiar and troublesome provision provides:

If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury

or disease remains a major but not necessarily predominant cause of disability or need for treatment.

G. L. c. 152, § 1(7A)(St. 1991, c. 398, § 14). In Lagos v. Mary A. Jennings, Inc., 11 Mass. Workers' Comp. Rep. 109 (1997), we concluded that physical/mental claims involving a combination of the work-related emotional disability with a pre-existing, non-compensable psychological condition, must be assessed under that fourth sentence of § 1(7A). Id. at 111-112. The present case, involving an industrial "reactivation" of the employee's dormant post-traumatic stress disorder, due to her reaction to the physical assault at school, clearly falls within the scope of this "combination injury" provision. The employee therefore needed to prove that her emotional disability had as "a major" cause the workplace assault.

With this analytical framework in mind, we turn to the medical testimony to see whether that evidence was sufficient to satisfy the judge's conclusion that the work-related emotional condition was "a major" cause of her ongoing incapacity under § 1(7A). (Dec. 18.) We conclude that it was.

In answer to the question, whether the episode at school would constitute a moderately significant role in the employee's ongoing disability, the impartial physician stated affirmatively, "that would be a moderately significant factor in the reactivation of a posttraumatic stress disorder, *which unfortunately seems to be persistent.*" (Dep. 13; emphasis added.) The doctor was then asked if the work incident would be considered a major or serious contributing cause. The doctor's answer took into account contributory factors that post-dated the work incident, namely the employee's divorce, her raising a child on her own, and having both parents die. (Dep. 14.) He summed up: "So, there are other factors in her life that would contribute to this, but the fact that I think that the incident of the school is probably the major factor in the reactivation of the posttraumatic stress disorder when we look at the history that we have." (Dep. 14.)

The judge reasonably interpreted the impartial physician's testimony as satisfying the § 1(7A) causal standard for proving that the work incident remained

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“a major contributing cause” of the employee’s ongoing disability. (Dec. 13, 18.)

See Lagos, supra.

The decision is affirmed.¹ Pursuant to § 13A(6), the self-insurer is ordered to pay employee’s counsel a fee of \$1, 357.64.

So ordered.

Martine Carroll
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Filed: **November 8, 2005**

Patricia A. Costigan
Administrative Law Judge

¹ We summarily affirm the decision as to the self-insurer’s other arguments on appeal. We only note that the consecutive opinions of the impartial physician most certainly establish a medical worsening under Foley’s Case, 358 Mass. 230, 232 (1970). Contrast February 23, 2001 Dec. at 10 (impartial doctor’s opinion that employee partially disabled from returning to work as a teacher) with July 15, 2004 Dec. 13 and Dep. 38 (employee is “not going to be able to keep a job”).